SUPREME COURT OF THE UNITED STATES.

No. 60.—October Term, 1927.

Ben W. Steele, Executor of Estate of A. B. Steele, Deceased, Petitioner, *vs.* J. H. Drummond. | On Writ of Certiorari to the United States Circuit Court of Appeals, Fifth Circuit.

[November 21, 1927.]

Mr. Justice Butler delivered the opinion of the Court.

Respondent sued in the district court for the northern district of Georgia to recover damages for breach of contract. A general demurrer was interposed and sustained. The Circuit Court of Appeals held that one count states a cause of action and reversed the judgment. The petition for certiorari was based on the contention that the contract in suit was contrary to public policy and void. No other question will be considered. *Alice State Bank* v. *Houston Pasture Co.*, 247 U. S. 240, 242; *Webster Co.* v. *Splitdorf Co.*, 264 U. S. 463, 464.

The material allegations are: Panama City and St. Andrews are adjoining municipalities in Florida. These were rival cities whose resources were timber lands and fisheries awaiting development. A. B. Steele was a stockholder in the Atlanta and St. Andrews Bay Railway Company which operated a railroad between Dothan, Alabama, and Panama City. He was interested in a lumber company which was a large stockholder in the railway company. Drummond owned much land in St. Andrews, and some of it was on St. Andrews Bay. Steele desired to extend the railway from Panama City to the bay. Drummond was willing to cooperate with him to that end. His purpose was to enhance the value of his lands by procuring railroad facilities for St. Andrews equal to those at Panama City. Steele agreed to procure a charter for a railway company; to convey to it a right of way within Panama City; to furnish all the iron and steel for track material; to deliver the cross ties which were to be furnished by Drummond; and to procure the proposed company, in conjunction with the At-

lanta & St. Andrews Bay Railway Company, to operate regular trains over the two roads from Dothan to St. Andrews, giving the latter the same service as that had by Panama City. Drummond agreed to obtain and convey to the new company a right of way within St. Andrews, "and to procure necessary franchises and ordinances from the town of St. Andrews"; to pay the cost of clearing and grading the whole line, furnish and lay all ties, build necessary trestles and culverts, lay the rails, and put in a wye; and to cause a tract of terminal land fronting on St. Andrews Bay to be conveyed to the new company. Steele procured the charter; organized a company and became owner of all its stock. And, at his instance, Drummond conveyed the completed railroad to the new company. Steele caused the railway service to be furnished as agreed until August, 1921, when operation ceased. Service at Panama City continued. Except for the covenant in respect of service for St. Andrews, Drummond would not have made the contract. This was known to Steele. And it is alleged that to perform on his part, Drummond expended $53,178.11; and that, by reason of Steele's failure to cause continuous service, Drummond's expenditures became a total loss.

Petitioner contends that the contract is illegal and void because respondent's undertaking to procure the passage of the ordinances was contrary to public policy. In *Marshall* v. *Baltimore and Ohio Railroad Company*, 16 How. 314, Mr. Justice Grier, delivering the opinion of the Court, said (p. 334): "It is an undoubted principle of the common law, that it will not lend its aid to enforce a contract to do an act that is illegal; or which is inconsistent with sound morals or public policy; or which tends to corrupt or contaminate, by improper influences, the integrity of our social or political institutions. . . . Public policy and sound morality do therefore imperatively require that courts should put the stamp of their disapprobation on every act, and pronounce void every contract the ultimate or probable tendency of which would be to sully the purity or mislead the judgments of those to whom the high trust of legislation is confided." And then, to make distinction between legitimate action and the contract condemned in that case, it is said: "All persons whose interests may in any way be affected by any public or private act of the legislature have an undoubted right to urge their claims and arguments, either in per-

son or by counsel professing to act for them, before legislative committees, as well as in courts of justice." While the principle is readily understood, its right application is often a matter of much delicacy. It is only because of the dominant public interest that one, who has had the benefit of performance by the other party, is permitted to avoid his own obligation on the plea that the agreement is illegal. And it is a matter of great public concern that freedom of contract be not lightly interfered with. *Baltimore & Ohio Southwestern Ry.* v. *Voigt*, 176 U. S. 498, 505. The meaning of the phrase "public policy" is vague and variable; there are no fixed rules by which to determine what it is. It has never been defined by the courts, but has been left loose and free of definition, in the same manner as fraud. 1 Story on Contracts, (5th ed.) § 675. *Pope Mfg. Company* v. *Gormully*, 144 U. S. 224, 233. It is only in clear cases that contracts will be held void. The principle must be cautiously applied to guard against confusion and injustice. *Atlantic Coast Line R. R. Co.* v. *Beazley*, 54 Fla. 311, 387; *Barrett* v. *Carden*, 65 Vt. 431, 433; *Richmond* v. *Dubuque & Sioux City R. R. Co.*, 26 Ia. 191, 202; *Egerton* v. *Earl Brownlow*, 4 H. L. Cas. 1, 122; *Richardson* v. *Mellish*, 2 Bing. 229, 242, 252. Detriment to the public interest will not be presumed where nothing sinister or improper is done or contemplated. *Valdes* v. *Larrinaga*, 233 U. S. 705, 709. The contract here under consideration is to be distinguished from those dealt with in *Tool Company* v. *Norris*, 2 Wall. 45; *Trist* v. *Child*, 21 Wall. 441; *Meguire* v. *Corwine*, 101 U. S. 108; *Oscanyan* v. *Arms Company*, 103 U. S. 261; *Hazelton* v. *Sheckells*, 202 U. S. 71, and *Crocker* v. *United States*, 240 U. S. 74. The claims there considered were under contracts requiring or contemplating the obtaining of legislative or executive action as a matter of favor by means of personal influence, solicitation and the like, or by other improper or corrupt means.

But this case is different. Drummond was not employed by Steele or by the railroad company to secure the passage of the ordinances. He was interested as an owner of property. Neither the contract, nor what was done, suggests that the location or construction of the proposed line was not a legitimate enterprise undertaken for the public good, or that anything improper was contemplated as a means to secure the passage of the ordinances. Drummond's object was to obtain the railway service; and, for that purpose, he expended a large sum. The mere fact that he

owned property that might be favorably affected does not tend to discredit him or to make evil his undertaking to obtain the ordinances. His interest in having the railroad extended into St. Andrews gave him the right in every legitimate way to urge the passage of appropriate ordinances. There is nothing that tends to indicate that in the promotion or passage of them there was any departure from the best standards of duty to the public. The contention that Drummond's agreement to secure their passage was contrary to public policy cannot be sustained. *Cole* v. *Brown-Hurley Co.*, 139 Ia. 487; *Burbank* v. *Gas Company*, 35 La. Ann. 444; *Greene* v. *Nash*, 85 Me. 148. Cf. *Houlton* v. *Nichol*, 93 Wis. 393; *Noble* v. *Mead-Morrison Mfg. Co.*, 237 Mass. 5, 21.

Petitioner also contends that the contract contravened public policy and is void because Steele agreed to procure the specified service to be given St. Andrews. The argument is that, in order to keep his covenant, he might be tempted to use his vote to obtain corporate action of the railroad companies that was not to the best interest of their stockholders. But the contention has no foundation of fact on which to rest. As shown above, it must be clearly established that public policy would be violated before Steele may raise that objection to prevent enforcement of the contract. The allegations do not indicate that the carriers were not in duty bound to give equality of service to these adjoining and competing towns; and, for aught that appears, their interests would have been served best by continuing operation over the new line. It does not appear that the giving of the service would have resulted to the disadvantage of either company or its shareholders. Steele took all the stock of the new company; it does not appear that it ever had any other stockholders. The facts alleged fail to show that performance would tend to constitute a fraud upon the old company or its stockholders or tend in any degree to injure them. It would be mere speculation to say that the transaction described has any tendency to bring Steele's personal interest into conflict with his duty as a voting shareholder.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.